

**ARTICLE 507
Dangerous Dogs**

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CROSS REFERENCES

Keeping vicious dogs - see W. Va. Code 19-20-20
Dangerous animals - see GEN. OFF. 505.04

507.01 PURPOSE AND INTENT.

The purpose of this article is to promote the public health, safety, and general welfare of the citizens of the City of Morgantown. It is intended to be applicable to "dangerous" dogs, as defined herein by ensuring responsible handling by their owners through registration, confinement, and liability insurance.
(Ord. 00-18. Passed 5-16-00.)

507.02 DEFINITIONS.

When used in this article, the following words, terms, and phrases, and their derivations shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) "Animal Control Officer" means any person employed or appointed by the City who is authorized to investigate and enforce violations relating to animal control or cruelty under the provisions of Article 505 of this Code.
- (b) "At large" means that a dog is not under the direct control of the owner.

- (c) "Dangerous dog" means any dog that, because of its aggressive nature, training or characteristic behavior, presents a risk of serious physical harm or death to human beings or domestic animals, or would constitute a danger to human life, physical well-being, or property or other domestic animals if not kept under the direct control of the owner. This definition shall not apply to dogs utilized by law enforcement officers in the performance of their duties. The term "dangerous dog" includes any dog that according to the records of either any City, any County, any State, or any law enforcement agency:
- (1) Has when unprovoked bitten, attacked, endangered, or inflicted injury on a human being on public or private property, or when unprovoked, has chased or approached a person upon the street, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by any of the above referenced authorities; or
 - (2) Has severely injured or killed a domestic animal while off the owner's property; or
 - (3) Has been used primarily or in part for the purpose of dog fighting, or is a dog trained for dog fighting; or
 - (4) Has previously been declared a dangerous dog by another municipality, any county or any state.
- (d) "Direct control" means immediate, continuous physical control of a dog such as by means of a leash, cord, secure fence, or chain of such strength to restrain the dog and controlled by a person capable of restraining the dog, or safe and secure restraint within a vehicle. If the controlling person is at all times fully and clearly within unobstructed sight and hearing of the dog, voice control shall be considered direct control when the dog is actually participating in training or in an official showing, obedience, or field event. Direct control shall not be required of dogs actually participating in a legal sport in an authorized area or to government police dogs.
- (e) "Impoundment" means the taking or picking up and confining of an animal by any police officer, Animal Control Officer, or any other public officer, under the provisions of this Article, Article 505 of the City Code or any applicable West Virginia Code provision.
- (f) "Muzzle" means a device constructed of strong, soft materials or of metal, designed to fasten over the mouth of any animal to prevent the animal from biting any person or other animal.
- (g) "Owner" means any person, partnership, corporation or other legal entity owning, harboring or keeping any animal, or in the case of a person under the age of eighteen (18), that person's parent or legal guardian. An animal shall be deemed to be harbored if it is fed or sheltered for three (3) or more consecutive days. This definition shall not apply to any veterinary clinic or boarding kennel.
- (h) "Sanitary condition" means a condition of good order and cleanliness to minimize the possibility of disease transmission.

- (i) "Under restraint" means that an animal is secured by a leash, led under the control of a person physically capable of restraining the animal and obedient to that person's commands, or securely enclosed within the real property limits of the owner's premises.
(Ord. 00-18. Passed 5-16-00.)

507.03 PROCEDURE FOR DECLARING A DOG DANGEROUS.

(a) An Animal Control Officer or any adult person may request under oath that a dog be classified as dangerous as defined in Section 507.02 by submitting a sworn, written complaint on a form approved by the City Manager. Upon receipt of such complaint, the City Manager, or his/her designee, shall notify the owner of the dog that a complaint has been filed and that an investigation into the allegations as set forth in the complaint will be conducted.

(b) Criteria to be considered during the above investigation shall include, but not be limited to the following:

- (1) Provocation,
- (2) Severity of attack or injury to a person or domestic animal,
- (3) Previous aggressive behavior of the dog,
- (4) Site and circumstances of the incident, and
- (5) Statements from interested parties.

(c) At the conclusion of an investigation, the City Manager may:

- (1) Determine that the dog is not dangerous and, if the dog is impounded, may waive any impoundment fees incurred and order the release of the dog to its owner; or
- (2) Determine that the dog is dangerous and order the owner to comply with the requirements for keeping dangerous dogs set forth in Section 507.06, and if the dog is impounded, release the dog to its owner after the owner has paid all fees incurred for the impoundment.
(Ord. 00-18. Passed 5-16-00.)

507.04 NOTIFICATION OF DANGEROUS DOG DECLARATION.

(a) Within five (5) business days after declaring a dog dangerous, the City Manager or his/her designee shall notify the owner by certified mail of the dog's designation as a dangerous dog and any specific restrictions and conditions for keeping the dog, as set for in Section 507.06. The City Manager also shall notify the Police Department and the City's Animal Control Officer of the designation of any dog as a dangerous dog. Such notification shall describe the dog and specify any particular requirements or conditions placed upon the dog owner.

(b) If the City Manager or his/her designee cannot with due diligence locate the owner of a dog that has been seized pursuant to this article, the City Manager shall cause the dog to be impounded for not less than five (5) business days. If after five (5) days, the owner fails to claim the dog, the City Manager may cause the dog to be humanely destroyed.
(Ord. 00-18. Passed 5-16-00.)

507.05 APPEAL FROM DANGEROUS DOG DECLARATION.

If the City Manager determines that a dog is dangerous at the conclusion of the investigation conducted under Section 507.03, that determination shall be final unless the dog owner applies to a court of competent jurisdiction for any remedies that may be available within 30 days after receiving notice that the dog has been finally declared dangerous. The appeal shall be a civil proceeding for the purpose of affirming or reversing the City Manager's determination of dangerousness.

(Ord. 00-18. Passed 5-16-00.)

507.06 KEEPING OF DANGEROUS DOGS.

The keeping of a dangerous dog as defined in Section 507.02 shall be subject to the following requirements.

- (a) **Leash.** No person having charge, custody, control or possession of a dangerous dog shall allow the dog to exit its kennel, pen or other proper enclosure unless such dog is securely attached to a leash no more than four (4) feet in length. No such person shall permit a dangerous dog to be kept on a chain, rope or other type of leash outside its kennel or pen unless a person capable of controlling the dog is in physical control of the leash.
- (b) **Muzzle.** It shall be unlawful for any owner or keeper of a dangerous dog to allow the dog to be outside of its proper enclosure unless it is necessary for the dog to receive veterinary care or exercise. In such cases, the dog shall wear a properly fitted muzzle to prevent it from biting humans or other animals. Such muzzle shall not interfere with the dog's breathing or vision.
- (c) **Confinement.** Except when leashed and muzzled as provided in this section, a dangerous dog shall be securely confined indoors or confined in a locked pen or other secure enclosure that is suitable to prevent the entry of children and is designed to prevent the dog from escaping. The enclosure shall include shelter and protection from the elements and shall provide adequate exercise room, light and ventilation. The enclosed structure shall be kept in a clean and sanitary condition and shall meet the following requirements:
 - (1) The structure must have secure sides and a secure top, or all sides must be at least six (6) feet high;
 - (2) The structure must have a bottom permanently attached to the sides or the sides must be imbedded not less than one (1) foot into the ground; and
 - (3) The structure must be of such material and closed in such a manner that the dog cannot exit the enclosure on its own.
- (d) **Indoor Confinement.** No dangerous dog shall be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition. In addition, no such dog shall be kept in a house or structure when the windows or screen doors are the only obstacle preventing the dog from exiting the structure.

- (e) Signs. All owners, keepers or harborers of dangerous dogs shall display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog."
- (f) Liability Insurance, Surety Bond. The owner of a dangerous dog shall present to the City Manager proof that he has procured liability insurance or a surety bond in the amount of not less than one hundred thousand dollars (\$100,000) covering any damage or injury that may be caused by such dangerous dog. The policy shall contain a provision requiring that the City be notified immediately by the agent issuing the policy in the event that the insurance policy is canceled, terminated or expires. The liability insurance or surety bond shall be obtained prior to the issuing of a permit to keep a dangerous dog. The dog owner shall sign a statement attesting that he shall maintain and not voluntarily cancel the liability insurance policy during the twelve (12) month period for which a permit is sought, unless he ceases to own or keep the dog prior to the expiration date of the permit period. The owner shall provide the City Manager with notice of any cancellation on the liability insurance policy. In the event that the owner proves to the satisfaction of the City Manager that insurance is not available, the owner may post with the City Manager a surety bond, of an equivalent amount, payable to any person injured by the dangerous dog.
- (g) Mandatory Spaying or Neutering. Within 30 days of the City Manager's determination that a particular dog is dangerous, the owner of said dog shall have it spayed or neutered and provide the City Manager with a written statement from the veterinarian, who performed the operation, verifying the same.
- (h) Notification of Escape. The owner or keeper of a dangerous dog shall notify the City Manager immediately if such dog escapes from its enclosure or restraint and is at large. Such immediate notification shall also be required if the dog bites or attacks a person or domestic animal.
- (i) Failure to Comply. It shall be unlawful and a misdemeanor for any owner of a dangerous dog registered with the City Manager to fail to comply with the requirements and conditions set forth in this Section. An owner or keeper of a dangerous dog who fails to register the dog shall be guilty of a misdemeanor and fined two hundred and fifty dollars (\$250.00). Each day that the dangerous dog is not registered shall be a separate offense. The fine for any other violation of this section, for which a specific fine amount has not been set forth, shall be one hundred dollars (\$100.00) with each day that the offense continues being a separate citable offense. Any dog found to be in violation of this Section 507.06 shall be subject to immediate seizure and impoundment. In addition, failure to comply with the requirements and conditions set forth in Section 507.06 may result in the City Manager revoking the permit providing for the keeping of such animal. Other ordinances pertaining to penalties for injuries inflicted by dogs shall be in addition to the penalties set forth herein.
(Ord. 00-18. Passed 5-16-00.)

507.07 PERMIT AND TAG REQUIRED FOR A DANGEROUS DOG.

(a) The owner of a dangerous dog shall, within three (3) business days after classification of the dog as dangerous or upon acquisition of such a dog, obtain an annual permit from the City of Morgantown to harbor the dog. The fee for such permit shall be fifty dollars (\$50.00) per year.

(b) At the time the permit is issued, a red circular tag shall be issued to the owner of the dangerous dog. The tag shall be worn at all times by the dog to clearly and easily identify it as a dangerous dog. The owner or keeper of a dangerous dog who registers but fails to place the foregoing red tag on said dog shall be guilty of a misdemeanor and fined \$250.00. Each day shall be a separate citable offense.

(c) The permit for maintaining a dangerous dog shall be presented to an animal control officer or police officer upon demand.
(Ord. 00-18. Passed 5-16-00.)

507.08 NOTIFICATION OF INTENT TO IMPOUND.

(a) When the City Manager or his designee intends to impound a dog declared to be dangerous for violation of Section 507.06 he shall notify the owner or custodian of the dog, by certified mail, of the intended impoundment at least five (5) business days prior to the intended impoundment except as provided in Section 507.09.

(b) The notice of intent to impound shall inform the owner or custodian of the dog that he may request in writing, within five (5) business days prior to the intended impoundment, a hearing before the City Manager to contest the intended impoundment and finding of violation.

(c) Upon request by the owner or custodian of the dog for a hearing pursuant to subsection (b) hereof, a hearing shall be held within ten (10) business days after the request for a hearing. Notice of the date, time and location of the hearing shall be provided by certified mail to the dog's owner or custodian requesting such hearing.

(d) If the owner or custodian requests a hearing pursuant to subsection (b) hereof, no impoundment shall take place until conclusion of the hearing, except as authorized in Section 507.09.
(Ord. 00-18. Passed 5-16-00.)

507.09 IMMEDIATE IMPOUNDMENT.

(a) A dog previously declared to be dangerous may be immediately impounded without a pre-impoundment hearing when the City Manager or his designee determines such immediate impoundment is necessary for the protection of public health or safety. Such immediate impoundment may be ordered for violation of Section 507.06 or when the dog bites a person or domestic animal.

(b) The owner or custodian of the dog immediately impounded pursuant to subsection (a) hereof shall be notified of the impoundment by certified mail within five (5) business days after the dog's impoundment.

(c) The notice of impoundment shall inform the owner or custodian of the dog that he may request, in writing, a hearing before the City Manager to contest the impoundment within five (5) business days after the mailing of the notice of impoundment.

(d) Upon request by the owner or custodian of the dog for a hearing under subsection (c) hereof, a hearing shall be held within ten (10) business days after such request. Notice of the date, time and location of the hearing shall be provided by certified mail to the dog owner requesting the hearing.
(Ord. 00-18. Passed 5-16-00.)

507.10 IMPOUNDMENT HEARING.

(a) If after a hearing on impoundment, the City Manager or his designee finds no violation of Section 507.06, or that the dog has not bitten an individual, or a domestic animal, the dog shall be returned to its owner or custodian if already impounded, or shall not be impounded as intended.

(b) Incident to the finding and conclusions made at the impoundment hearing, the City Manager or his designee may impose reasonable restrictions and conditions for the maintenance of the dog, in addition to those set forth in Section 507.06, to ensure the health and safety of the public and the animal. Such conditions may include, but shall not be limited to:

- (1) Posting of bond or other proof of ability to respond to damages;
- (2) Specific requirements as to size, construction and design of a kennel in which to house the dog;
- (3) Requirements as to type and method of restraint and/or muzzling of the dog;
- (4) Photo identification or permanent marking of the dog for purposes of identification; and
- (5) Payment of reasonable fees to recover the costs incurred by the City of Morgantown in ensuring compliance with this article.
(Ord. 00-18. Passed 5-16-00.)

507.11 DESTRUCTION.

(a) The City Manager or his designee may order the destruction of a dog that it determines to be extremely dangerous to public health or safety, a dog that has made an extremely vicious attack upon an individual, or a dog declared dangerous whose owner is unable or unwilling to adequately restrain it.

(b) The City Manager or his designee shall give written notice by certified mail of his intention to destroy such dog to the owner or custodian of the dog, who may request in writing, within ten (10) business days after delivery of such notice, a hearing before the City Manager to contest the intended destruction.

(c) If no hearing is requested pursuant to subsection (b) hereof, the dog shall be destroyed pursuant to applicable provisions of law.

(d) If a hearing is requested pursuant to subsection (b) hereof, such hearing shall be held by the City Manager within ten (10) business days after the request; and the dog shall not be destroyed prior to the conclusion of the hearing.

(e) The dog owner shall be responsible for payment of all boarding costs and other fees as may be required for the City to humanely and safely keep the animal during any legal proceeding. (Ord. 00-18. Passed 5-16-00.)

507.12 APPEAL FROM ORDER OF HUMANE DESTRUCTION.

If a Section 507.11 hearing results in the City Manager or his designee ordering a dangerous dog to be humanely destroyed, that decision shall be final unless the dog owner applies to a court of competent jurisdiction for any remedies that may be available within ten (10) days after receiving notice of the destruction order. If an appeal is timely filed, the City Manager shall suspend the destruction order pending the final determination of the court. The appeal shall be a civil proceeding for the purpose of affirming or reversing the City Manager's destruction order.

(Ord. 00-18. Passed 5-16-00.)

507.13 CHANGE OF OWNERSHIP.

(a) Any owner of a dangerous dog who sells or otherwise transfers ownership, custody or residence of the dog shall, within ten (10) days after such change of ownership or residence, provide written notification to the City Manager of the name, address and telephone number of the new owner. It also shall be the responsibility of the person transferring ownership or custody of the dog to provide written notification of the dog's classification as dangerous to the person receiving the dog. The previous owner shall furnish a copy of such notification to the City Manager along with written acknowledgment by the new owner of his receipt of such notification. The City Manager or his designee shall notify the Morgantown Police Department and City's Animal Control Officer of any changes of ownership, custody or residence of the dog within three (3) business days after receiving the required information from the previous dog owner.

(b) Any person receiving a dog classified as dangerous must obtain the required permit, tag and enclosure prior to acquisition of the dog. The new owner shall comply fully with the provisions of this article pertaining to obtaining liability insurance, payment of fees, and maintenance, control and ownership of a dangerous dog.

(Ord. 00-18. Passed 5-16-00.)

507.14 CONTINUATION OF DANGEROUS DOG DECLARATION.

Any dog that has been declared dangerous by this City, another municipality, any county, or any state shall be subject to the provisions of this article as long as it remains in the City. The person owning or having custody of any dog designated as a dangerous dog by any municipality, county, or state government shall notify the City Manager within ten (10) days of moving the animal into the City of Morgantown. The restrictions and conditions applicable to dangerous dogs and contained within this article shall remain in force while the dog remains in the City.

(Ord. 00-18. Passed 5-16-00.)